

AMENDED IN SENATE MAY 3, 2004
AMENDED IN SENATE APRIL 20, 2004

SENATE BILL

No. 1822

Introduced by Senator Figueroa

February 20, 2004

An act to add Title 1.81.15 (commencing with Section 1798.88) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1822, as amended, Figueroa. Privacy: online communications.

Existing law protects the privacy of personal information, including customer records and social security numbers. Existing law prohibits a person or entity located in California from initiating or advertising in unsolicited commercial e-mail advertisements, as defined, and prohibits a person or entity not located in California from initiating or advertising in unsolicited commercial e-mail advertisements sent to a California e-mail address.

This bill would prohibit a provider of e-mail or instant messaging services, as defined, that serves California customers, from reviewing or evaluating the content of a customer's e-mail or instant messages *for marketing purposes, as defined*, except *with the customer's, or with the customer's and the sender's consent*, as specified. ~~The bill would permit a provider of e-mail or instant messaging services to review and evaluate the content of a customer's outgoing e-mail or instant messages with the customer's consent, and would permit a provider to review and evaluate the content of incoming e-mail or instant messages only from another subscriber to the same service and only when that subscriber has consented to the procedure.~~ *The bill would except from*

the definition of marketing purposes the filtering of unsolicited e-mails to remove spam or to manage malicious computer programs.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 1.81.15 (commencing with Section
2 1798.88) is added to Part 4 of Division 3 of the Civil Code, to read:

3

4 TITLE 1.81.15. PRIVACY OF ONLINE
5 COMMUNICATIONS
6

7 1798.88. For the purpose of this title:

8 (a) “Electronic mail” or “e-mail” means an electronic
9 message that is sent to an e-mail address and transmitted between
10 two or more telecommunications devices, computers, or
11 electronic devices capable of receiving electronic messages,
12 whether or not the message is converted to hard copy format after
13 receipt or is viewed upon transmission or stored for later retrieval.
14 “Electronic mail” or “e-mail” includes electronic messages that
15 are transmitted through a local, regional, or global computer
16 network.

17 (b) “Instant messaging service” means a service that alerts a
18 person when another person is online and allows them to
19 communicate with each other in current time in private, online
20 areas.

21 (c) “Provider of electronic mail or instant messaging service”
22 means any person, including an Internet service provider, that is
23 an intermediary in sending or receiving electronic mail or instant
24 messages or that provides to users of the electronic mail or instant
25 messaging service the ability to send or receive electronic mail or
26 instant messages.

27 (d) “Spam” means an unsolicited commercial e-mail
28 advertisement sent to a recipient who meets both of the following
29 criteria:

30 (1) The recipient has not provided direct consent to receive
31 advertisements from the advertiser.

32 (2) The recipient does not have a preexisting or current
33 business relationship with the advertiser promoting the lease, sale,



rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

~~1798.88.1. (a) (1) Except as provided in paragraph (2), a provider of e-mail or instant messaging services to California customers may not review, examine, or otherwise evaluate the content of a customer's outgoing or incoming e-mail or instant messages, unless that provider has a court order or is otherwise required by law to do so.~~

~~(2) A provider of e-mail or instant messaging services to California customers may review, examine, or otherwise evaluate the content of a customer's e-mail or instant messages if the provider has the consent of the customer, and reviews, examines or otherwise evaluates only the customer's original outgoing e-mail or instant messages with the consent of the customer. The provider may review, examine, or otherwise evaluate the content of incoming e-mail or instant messages only from another subscriber to the same service and only when that subscriber has consented to the procedure.~~

~~(b) This section does not prevent a provider of e-mail or instant messaging services to California customers from filtering unsolicited e-mail for removing spam or for managing computer viruses or other malicious programs. A provider of e-mail or instant messaging services to California customers may not review, examine, or otherwise evaluate the content of text of outgoing or incoming e-mail or instant messages for marketing purposes, except as follows:~~

~~(1) In the case of outgoing e-mail or instant messages, with the consent of the customer.~~

~~(2) In the case of incoming e-mail or instant messages, with the consent of the customer and the sender of the e-mail or instant message.~~

~~(b) For the purposes of this section, 'marketing purposes' means for the purposes of providing advertisements that seek to solicit or induce a purchase, rental, lease, or exchange of products, goods, property, or services, and does not include the filtering of unsolicited e-mails for the purpose of removing spam or the management of computer viruses or other malicious programs.~~